INTERIOR BOARD OF INDIAN APPEALS

Estate of Andrew Jackson

12 IBIA 39 (10/18/1983)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF ANDREW JACKSON

IBIA 83-15 Decided October 18, 1983

Appeal from an order after rehearing issued by Administrative Law Judge Robert C. Snashall in Indian Probate Nos. IP PO 176L 81-216 and IP PO 144L 82-171, which affirmed with modification a March 11, 1982, order approving will and decree of distribution.

Affirmed.

1. Administrative Procedure: Hearings--Indian Probate: Hearings: Generally

   Notice of a hearing is not defective when notice was sent to the appellant at his last known address more than a month before the hearing, the letter was not returned, testimony of other individuals attending the hearing showed that appellant knew of the hearing, and appellant's notice of appeal shows on its face that he knew of the hearing.

2. Indian Probate: Rehearing: Generally

   An appellant who attended the original Indian probate hearing into a decedent's estate, raised no objection to decedent's will at that hearing, and fails to present to the Administrative Law Judge or to the Board of Indian Appeals any substantiation for later objections or explanation for the lack of such substantiation has not shown adequate grounds for rehearing under 43 CFR 4.241.

APPEARANCES: Johnny W. Jackson, pro se; Phillip L. Jackson, pro se. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On January 31, 1983, the Board of Indian Appeals (Board) received a notice of appeal filed by Johnny W. Jackson (appellant), pro se, from an order after rehearing in the estate of Andrew Jackson (decedent). The order appealed from was entered by Administrative Law Judge Robert C. Snashall on October 26, 1982, and affirmed as modified an order approving will and decree of distribution entered on March 11, 1982. For the following reasons, the Board affirms the October order.

Background

Andrew Jackson, Yakima allottee 124-3672, was born January 1, 1907, and died July 16, 1981, in Klickitat, Washington, at the age of 74. Decedent and his wife, who predeceased him, had ten children, six of whom were living at the time of decedent's death. Decedent's living children are Johnny W. Jackson, Elliott, Nettie Jackson Kuneki, Carol Jackson Leslie, Russell, and Sharon Jackson Dick. All of decedent's children are enrolled members of the Yakima Tribe with 7/16 Yakima blood quantum.

The record further reveals that decedent was survived by children of two of his deceased children. A deceased son, Ernest, had eight children. Of these children, the records of the Bureau of Indian Affairs (BIA) show seven as enrolled members of the Minnesota Chippewa Tribe, appearing on the White Earth Roll, Pillager Band, as 1/2 Minnesota Chippewa blood quantum. One of these children had been adopted out from his natural family. Ernest's eighth child, Phillip, resides on the Umatilla Reservation.

Decedent's deceased daughter, Ursula (Gloria), had seven children. Three of these children had been adopted out. The four remaining children, Veronica D. Wesley, Consuelo Angela Wesley, Corbett Dean Thompson, and Jerry Larry White, Jr., are enrolled members of the Yakima Tribe with 1/2 or greater Yakima blood quantum. The record indicates that these four children had been raised by decedent and his wife following their mother's death.

Decedent executed a last will and testament on March 11, 1977. In this will, decedent mentioned only his six living children and the four children of his deceased daughter, Ursula (Gloria), who were named above. The testamentary provisions of his will left his "home and yard area on allotment 3181" to his daughter, Sharon, and the remainder of his estate to his six children and Veronica, Consuelo, Corbett, and Jerry.

A hearing into decedent's estate was conducted on January 19, 1982. No questions were raised about decedent's competence to execute a will or about the accuracy of the transcription of his wishes. The Administrative Law Judge, however, expressed concern, sua sponte, that the phrase "home and yard area on allotment 3181" was ambiguous and insufficient to allow certain identification of the property decedent sought to convey to Sharon. The Administrative Law Judge stated that he would investigate the matter further with the BIA Realty Office in an attempt to uphold the provision. 1/

An order approving the will and construing the devise to Sharon was issued on March 11, 1982. On May 7, 1982, Johnny, Nettie, Sharon, and Carol

1/ The transcript of the hearing also shows that decedent's children and the Administrative Law Judge were aware that decedent had encountered problems arising from the Yakima Tribe's purchase of certain inherited interests in trust property, apparently under the Act of Dec. 31, 1970, 84 Stat. 1874, 25 U.S.C. § 607 (1976), and Departmental regulations found in 43 CFR 4.300-.308.

filed a petition for rehearing. Petitioners stated that they did not believe decedent intended his children to share his estate equally with four of his grandchildren. They therefore alleged that the will was not properly executed as shown by the facts that one clause required clarification and that the residuary clause did not state whether the named individuals were to inherit in equal shares or by representation. Furthermore, it was suggested that decedent's four grandchildren mentioned in the will had exerted undue influence on him causing him to increase their shares in the estate.

Although the Administrative Law Judge found that the petition was inadequate under 43 CFR 4.241 to justify rehearing, he nevertheless ordered a rehearing because he had used information obtained from the Realty Office after the initial hearing in construing the will. Because petitioners had not had an opportunity to address this evidence, he felt rehearing should be granted. 2/

Only one of the petitioners, Carol Jackson Leslie, attended the second hearing, held on September 22, 1982. By order dated October 26, 1982, the Administrative Law Judge found that

> no evidence has been produced in support of the contention made in the Petition for Rehearing nor has any reasonable explanation been given in explanation of the lack thereof, and, in fact all in all, the record as a whole, including the transcript of testimony, fully support by the preponderance of the evidence the correctness of the Order Approving Will and Decree of Distribution of March 11, 1982.

He consequently affirmed the original order approving will as modified by the addition of certain trust properties owned by decedent and under the control of the Warm Springs Indian Agency, which had been inadvertently omitted from the inventory presented at the original hearing.

On December 26, 1982, appellant filed a notice of appeal with the Administrative Law Judge. Appellant alleged that be had been denied due process because notice of the rehearing had been defective and because the Administrative Law Judge improperly failed to reconvene the rehearing when appellant arrived late due to "mitigating circumstances." Appellant seeks a third hearing in order to submit allegedly new evidence relevant to the probate of decedent's estate.

The Board's notice of docketing of this appeal, issued on February 18, 1983, included a briefing schedule for all interested parties. No briefs

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2/ In Estate of George Swift Bird, 10 IBIA 63 (1982), the Board considered the question of evidence obtained and utilized by an Administrative Law Judge after the close of the probate hearing. Although the Board does not generally condone the practice of obtaining additional evidence after the conclusion of a hearing, the Administrative Law Judge was correct in this case that when an objection was raised and rehearing was sought, procedural due process required that petitioners be given an opportunity to address such evidence through rehearing.

were filed within the time allowed. On May 17 and 27, 1983, however, Phillip L. Jackson, a grandson of decedent who was omitted from the will, filed statements on his own behalf.

Discussion and Conclusions

[1] Appellant first alleges that notice of the second hearing was defective. No support is given for this assertion. The record indicates that notice of the hearing was mailed to appellant at his last known address on August 20, 1982, more than a month before the hearing. The letter was not returned by the Postal Service. See 43 CFR 4.211(b)(2). Testimony by Carol Jackson Leslie at the hearing indicated that appellant knew of the hearing and that she was surprised that the other petitioners were not present. The transcript further indicates that the Administrative Law Judge had not been contacted by any attorney on appellant's behalf, as alleged in the notice of appeal. By appellant's own statement, he knew of the hearing and arrived after the hearing had been concluded. Under these circumstances, the Board finds no defect in notice of the hearing. Cf. Estate of Wilma Florence First Youngman, 10 IBIA 3, 4 n.1, 89 I.D. 291 n.1 (1982) (finding incorrect filing of notice of appeal to constitute harmless error when all parties received actual notice of the appeal).

Appellant next argues that the Administrative Law Judge's refusal to reconvene the hearing after his late arrival prevented him from presenting new witnesses and evidence in support of his position. The Board initially notes that appellant has made no attempt to explain the "mitigating circumstances" that allegedly prevented him from attending the second hearing at the time scheduled or from informing the Administrative Law Judge that he would be late and requesting a continuance of the hearing. The Administrative Law Judge was not required to anticipate that appellant would be arriving late or to grant a third hearing when appellant eventually appeared.

Furthermore, as the Administrative Law Judge observed in his order granting rehearing, the petition for rehearing was in itself insufficient to justify reopening under 43 CFR 4.241 in that it was a petition apparently based upon newly discovered evidence and was not accompanied by affidavits of witnesses stating fully what the new testimony was to be and did not give reasons why this evidence could not have been presented at the original hearing. Neither has appellant presented such evidence or an explanation for his failure to present evidence to the Board on appeal.

[2] Appellant attended the original hearing into his father's estate. He raised no objection to the will at that time. The objections raised after the issuance of the initial order approving will have not been substantiated or the lack of substantiation explained. There is no evidence of error in the transcribing of the will or of undue influence exerted upon decedent by some of the devisees. The record on appeal fully supports the finding that decedent intended his will to have the meaning given to it by the Administrative Law Judge. Although another person might have written the will differently, the testamentary scheme is not irrational. 3/ See Tooahnippah v.

3/ In this regard, the Board notes that decedent left his trust property to only enrolled members of the Yakima Tribe with 1/4 degree or more Yakima blood quantum. Because of this fact, no devisee could be divested of trust property

Hickel, 397 U.S. 598 (1970). The Board agrees with the Administrative Law Judge that appellant has not shown adequate grounds for rehearing and that a third hearing into this estate should not be held. See Estate of John Bear Shield, 9 IBIA 1 (1981).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 26, 1982, order affirming as modified the March 11, 1982, order approving will and decree of distribution in this case is affirmed.

//original signed
Jerry Muskrat
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Franklin D. Arness
Administrative Judge

fn.3 (continued)
by tribal purchase under 25 U.S.C. § 607 (1976). Furthermore, decedent and his wife raised the four grandchildren mentioned in his will. Decedent might have felt a much closer tie to these individuals than to his other grandchildren or might have considered that they needed more assistance because his death would orphan them a second time.